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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,196	05/14/2001	Christopher Peter Olson	KCC-14,944	8184

7590 07/27/2005

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EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,196

Applicant(s)

OLSON ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathis et al. USPN 5680653 in view of Strack et al. USPN 5681645.

As to claims 1-4, 15-19, and 27, Mathis discloses an elastic composite to be used in the vicinity of waist and leg openings, to form elastic closure tabs or elastic ear or bands absorbent article (Abstract, col. 3, lines 21-27; col. 4, lines 7-20, and Figures 1, 2, and 4-7). Applicant has defined "apparent elastic band" on page 7, line 12 through page 8, line 6 of the specification, which includes a stretchable material overlaying all or part of a waist region or leg cuff/hem area of a garment that may be attached to underlying elastic materials that provide elastic retraction. The elastic composite of Mathis comprises a stretchable material adhered to an elastomeric material in the region of a waist or leg/cuff area of an absorbent article, which provides an apparent elastic band as defined by the applicant.

Mathis does not specifically disclose the apparent elastic band includes at least one elastomeric filament. Mathis discloses the elastic band comprises nonwoven webs formed from a spunbond polyolefin web, a meltblown polyolefin web, spunlaced polyolefin web, or nylon tricot flat knits (col. 5, lines 35-42). Strack discloses elastomeric nonwoven laminates suitable for use in disposable articles and medical garments comprising spunbond webs, meltblown webs, or nylon tricot knit fabrics (Abstract, col. 2, lines 28-33 and line 51 through col. 3, line 4; col. 4, lines 11-25; col. 6, lines 22-25; col. 8, lines 49-57; and col. 12, lines 16-17). Strack discloses the spunbond webs are extruded from molten thermoplastic material similar to the process described in Mathis col. 7, lines 6-8. Strack discloses filament spunbonded fibers are produced by this process. Strack additionally discloses a nylon tricot continuous fiber used in the elastomeric laminate (col. 12, lines 16-17). Strack discloses continuous fibers

Art Unit: 3761

(filaments) are preferred because they tend to produce less lint than other materials and can be conventionally produced (col. 8, lines 55-58). It would have been obvious to one having ordinary skill in the art to modify the nonwoven of Mathis with an elastomeric filament, since Strack provides teachings where it is known in the art to use filaments in elastomeric nonwoven laminates and Strack teaches the benefits provided by using elastomeric filaments.

As to claims 5, 20, and 21, Mathis/Strack discloses a targeted elastic material 24 having selected areas or zones of elasticity (Mathis col. 6, lines 24-31), which creates low tension (inelastic zones) and high tension (elastic zones).

As to claim 6 and 22, the layer 22 overlays the layer 24 – see Mathis Figures 1 and 2.

As to claims 7-12, 23, and 24, see Mathis col. 5, lines 24-42.

As to claims 13, 14, 25, and 26, Mathis/Strack discloses the present invention substantially as claimed except for Mathis/Strack teaches a stretchable nonwoven and does not specifically disclose a color or pigment in the elastic component. However, applicant uses a teaching of a color or pigment in the elastic component and the presence of a stretchable nonwoven equally, to create a visible perception of an elastic band (specification, page 4, lines 1-10). Therefore, It would have been an obvious matter of design choice to provide the articles of Mathis/Strack with a color pigmented

elastic material, since it appears a visual perception of a continuous band would be provided equally well by the elastic laminate invention of Mathis/Strack.

As to claims 27-37, the limitations regarding the type of disposable garment are directed to an intended use of the article. "Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art." See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations. Mathis discloses various applications for the elastic laminate (Abstract, Figures 1 and 4-7; col. 3, lines 21-26). Strack additionally discloses the elastomeric laminates can be used in a variety of infection control products, personal care products, and garments (Strack Abstract, col. 4, lines 11-25).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

July 25, 2005